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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,469	09/23/2003	Jesse Adam Hummer	100204679-1	9050
22879 7590 07/28/2008 HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400				
EXAMINER				
MESFIN, YEMANE				
ART UNIT		PAPER NUMBER		
2144				
NOTIFICATION DATE		DELIVERY MODE		
07/28/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/667,469

Applicant(s)

HUMMER, JESSE ADAM

Examiner

Yemane Mesfin

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-36 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 08 May 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

1. The response received on 05/08/2008 has been entered. Claims 1-36 remain pending in this application.

Response to Arguments

2. Applicant's arguments filed 05/08/2008 have been fully considered but they are not persuasive.
3. The applicant challenges the claim rejection under 35 U.S.C. 101, arguing that software per se is statutory as long as it produces a tangible result (see Remarks, Page 9-12). Examiner strongly disagrees.

Argument: In essence the applicant argues/recites that “Claims 1-9 should be evaluated by their features not by what those claims incidentally cover” (Remarks Page 10, ¶1); Applicant further recites “anyone of ordinary skill in the art would know that a system as recited by Claim 1 could be implemented using hardware, software, firmware, or a combination thereof” and “an embodiment that recites tangible result is patentable” (Remarks Page 10, ¶2-3).

Response: Examiner disagrees with applicant's analysis of patentability under 35 U.S.C. 101 and maintains the rejection for reasons set forth in the rejection (see rejection below). Examiner agrees with applicant's statement that “anyone of ordinary skill in the art would know that a system as recited by Claim 1 could be implemented using hardware, software, firmware, or a combination thereof”. However, it should be noted that that the matter here is not a question of what form the claim could possibly be implemented, but the fact that the claim is not limited to a statutory subject matter, as it is shown to be implemented entirely as a software (a program per se). It should also be noted that the examiner has not rejected the claims for lack its tangible result, but for

the fact that the claim is subject to software per se, which is not statutory. Therefore, it is examiner's position that software per se, regardless of its tangible result is not statutory.

Argument: Applicant further argues, "...Office Action asserts that Claims 25 and 33 must recite instructions stored on a computer readable storage medium. Since as Applicant's have already pointed out that tying instructions to a tangible medium is immaterial as to whether or not the results are tangible, Applicant traverses the rejection of Claims 25-29 and 33-36..."

Response: Examiner disagrees substantially for the same reasons provided in the response above. It should be clear that a "tangible result" of the claimed invention is not challenged by the examiner, but the tangibility of the invention itself and not of its result.

Thus, that line of argument is not persuasive; and the rejection of claims 1-16, 25-29, and 33-36 under 35 U.S.C. 101 is maintained accordingly.

Argument: Applicant recites "Applicant does not understand Cormier's information describing the dependencies between services required by a particular plug-in module to teach, describe or suggest, "operational status" (see Remarks Page 14, ¶5).

Response: It should be noted that Cormier disclosed a plug-in module including thereon plug-in state information (see Column 11, Lines 13-27), which is used managing operational state of the plug-in modules including when the modules are initiated, during which time the plug-in modules are performing/running and when providing the services (see Column 7, Line 55 through Column 8, Lines 11). Furthermore, since the teachings of Cormier taught the dependency of one plug-in on another plug-in by sharing state information execution state, the dependency implicitly involves sharing operational state of the plurality of plug-ins as disclosed by the teachings of Cormier.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-16, 25-29, and 33-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1 and 12 each recite a plug-in per se, which is directed to a computer program alone. A typical plug-in is a software program that extends special functionality to a larger core software program. Also evidenced by the applicant's disclosure, "a plug-in is typically a software module that tightly integrates with a larger program". (See Specification Page 6, ¶0023). Therefore, claims 1-16 are rejected as being directed to a non-statutory subject matter.

Claims 25 and 33 each recite "a computer readable medium including instructions ...". Applicant's disclosure shows no clear intention or attempt to include a nonstatutory computer readable medium (such as a computer readable transmission media for propagating computer executable instructions) and neither does applicant's disclosure negate the intention to encompass a non statutory subject matter. Thus, given a typical interpretation or definition/scope of a "computer readable medium", these claims are not necessarily limited to only statutory subject matter. Thus, these claims are rejected as being directed to a non-statutory subject matter, which is not actually stored on a computer readable storage medium (emphasis added) so to be executable by a computer system.

Note: A computer readable/executable instruction(s) must be stored in a computer readable storage medium (statutory) to be realized by a computer system.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Cormier et al. (U.S. Patent Number 7,254,814) hereinafter “Cormier”.

As per claims 1, 12, 17, 25, 30 and 33, (exemplary claim 1), Cormier disclosed a plug-in to a host (Fig. 1, # 160 series), the plug-in providing one or more special capabilities to the host (Column 1, Lines 30-45, plug-in), the plug-in comprising: core means for conducting typical operation of the plug-in by which the one or more special capabilities are carried out (Column 1, Line 60 through Column 2, Line 18, typical operation of a plug-in and Fig. 5); and interface means for interfacing between the core means and a calling entity with respect to operational status of the plug-in (Column 4, Lines 6-20, Column 7, Line 55 through Column 8, Line 11 and Column 11, Lines 13-16), wherein the operational status is provided to a second plug-in that requested the operational status from the plug-in (Column 7, Line 55 through Column 8, Lines 11 and Column 11, Lines 13-27).

As per claims 2, 13, 26 and 34: Cormier disclosed, wherein: the interface means is a first interface means; and the plug-in further comprises second interface means for interfacing between

the core means and the host with respect to the typical operation(Fig.1, interfacing host plug-in with a core software application and see Column 9, Lines 24-30).

As per claims 3, 14, 19, 27, 32 and 35, Cormier disclosed the host tends one or more storage devices and represents a part of a storage area network (SAN); and the calling entity represents a storage manager of the SAN (Fig. 1, # 115, calling SAN manager in communication with SAN management server over a Storage Area Network.)

As per claims 4, 15 and 28: Cormier disclosed, wherein, relative to a client-server architecture (Fig. 1, client/server architecture), the following relationships apply: the calling entity represents a client relative to the plug-in; and the plug-in represents a server relative to the calling entity (Column 7, Lines 39-66 and Column 8, Lines 20-31).

As per claims 5, 16, 29, and 36: Cormier disclosed, wherein the client-server architecture is the JCore architecture such that the calling entity is a JCore client plug-in and the plug-in is a JCore server plug-in (Column 4, Lines 21-27 and Column 7, Lines 45-54).

As per claims 6, Cormier disclosed butler means for gathering operational status information (Op_Stat_Info) representing the operational status of the plug-in (Column 7, Line 55 through Column 8, Line 11).

As per claims 7 and 20, Cormier disclosed, wherein the butler means is operable for performing the gathering of the Op_Stat_Info in an on-going manner while the plug-in is plugged-into the host (Column 7, Line 55 through Column 8, Line 11).

As per claims 8 and 21, Cormier disclosed, wherein the butler means is further operable to cause one or more pieces of the Op_Stat_Info to be stored upon the one or more pieces being

gathered initially, respectively; and update the one or more pieces, respectively, as is appropriate relative to the on-going manner by which the butler means gathers the Op_Stat_Info (Column 14, Lines 14-31).

As per claims 9 and 22, Cormier disclosed, status data object (DO) means for storing the Op_Stat_Info; wherein the butler means is further operable for causing the Op_Stat_Info to be stored via the status DO means, the status DO means is accessible by the calling entity via the interface means (Fig. 1, Column 7, Line 55 through Column 8, Line 11 and Column 14, Lines 14-31 calling entity/Storage Manager remotely interfaced with a Storage management server on a SAN, the manager storing operational state of plug-ins).

As per claims 10 and 23, Cormier disclosed, wherein the butler means is operable for initiating the gathering the Op_Stat_Info in response to receiving a request from the calling entity (Column 6, Lines 36-42), and for performing the gathering, once initiated, of the Op_Stat_Info (Column 7, Line 55 through Column 8, Line 11 and Column 14, Lines 14-31) in an ad hoc manner (Column 6, Lines 31-44 & Lines 60-65 and Column 6, Lines 44-54).

As per claims 11 and 24, Cormier disclosed, status data object (DO) means for storing the Op_Stat_Info; wherein the butler means is further operable for causing the Op_Stat_Info to be stored via the status DO means, and passing, upon completion of the gathering, the status DO to the calling entity (Fig. 1, Column 7, Line 55 through Column 8, Line 11 and Column 14, Lines 14-31 calling entity/Storage Manager remotely interfaced with a Storage management server on a SAN, the manager storing operational state of plug-ins).

As per claims 18 and 31, Cormier disclosed exchanging typical information between the plug-in and the host, the exchange of the typical information being a part of typical operation of the plug-in by which the one or more special capabilities are carried out (Column 1, Line 34 through Column 2, Line 18 and Column 3, Lines 1-17, typical operation of a plug-in providing/extending special capability to the core software application).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yemane Mesfin whose telephone number is (571) 272-3927. The examiner can normally be reached on 9:00 AM - 6:00 PM Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William C. Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2144

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Y.M./

AU : 2144

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2144